



Missouri Department of Natural Resources

Clean Water Commission Water Pollution Control Program

Meeting Minutes

September 5, 2002

MISSOURI CLEAN WATER COMMISSION MEETING
September 5, 2002
DNR Elm Street Conference Center, Jefferson City, Missouri

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission
Arthur E. Hegi, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

John Carter, The Doe Run Company, Viburnum, Missouri
Randy Clarkson, Department of Natural Resources, Jefferson City, Missouri
Cindy DiStefano, Department of Conservation, Columbia, Missouri
Leo Ebel, Horner & Shifrin, St. Louis, Missouri
Craig Edlund, Alliance Water Resources, Columbia, Missouri
Gary Edwards, City Administrator, Festus, Missouri
Carol Eighmey, PSTIF, Jefferson City, Missouri
Gary Elmestad, Consolidated North County Levee District, St. Charles, Missouri
Therese Folsom, Sierra Club, Columbia, Missouri
Jim Hull, Director of Staff, Missouri Clean Water Commission
Duane Kelly, Independence, Missouri
Richard J. Laux, Department of Natural Resources, Jefferson City, Missouri
Mark Lenox, Fort Leonard Wood, Fort Leonard Wood, Missouri
Bruce Litzsinger, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Deborah Neff, Assistant Attorney General, Jefferson City, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
Charles Raab, City of Kansas City, Kansas City, Missouri
Jay Reichard, JRM & Associates, Jefferson City, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri
Scott B. Totten, Department of Natural Resources, Jefferson City, Missouri
Steve Townley, Department of Natural Resources, Jefferson City, Missouri
Diane Waidelich, Secretary, Missouri Clean Water Commission
Larry VanGilder, Taney County Regional Sewer District, Branson, Missouri

Chairman Herrmann called the meeting to order at approximately 1:30 p.m. Commissioner Greene was absent from the meeting.

Adoption of August 7, 2002 Commission Meeting Minutes

Commissioner Kelly moved **to adopt the August 7, 2002 commission meeting minutes as submitted by staff**; seconded by Commissioner Minton and unanimously approved.

Update on Comprehensive Risk-Based Groundwater Remediation Rule

Scott Totten, Director of the Water Protection and Soil Conservation Division, introduced stakeholders Mike Alesandrini, Kevin Perry and Carol Eighmey. Mr. Totten reported the department and several partners asked the commission to withdraw the proposed rule that had been published in the February 1, 2002 *Missouri Register* at its May 1, 2002 meeting. The commission granted this request after hearing several comments that more work is needed on the rule. The commission also provided direction to staff to convene a group of interested stakeholders within 20 days of the May 1 meeting and to begin development of an alternative to the proposed rule.

Mr. Totten stated he chaired the meeting of a small group of interested stakeholders who met in St. Louis immediately after the May 1 commission meeting. Others that should be invited to participate in the group along with the need for a facilitator to keep efforts focused were identified at that meeting. A facilitator who has worked with RBCA issues for about 20 years has been hired.

The first meeting of the entire group of stakeholders was held June 13 and was open to the public. Clean Water Commission and Hazardous Waste Management commissioners were invited to that meeting. Mr. Totten reported the group met again on June 27, July 12, July 25, August 8 and August 22 and 23. He noted information from the meetings is available if desired.

Mr. Totten reported the stakeholders concluded that considering the risks from groundwater in a vacuum might not be prudent as it is not a holistic approach and could result in significant underestimation of the human health and environmental risks posed by any particular site. The group agreed that they would take an approach to the assessment of risks to manage contaminated sites that considers air, soil, groundwater, surface water and sediment, all complete routes of exposure and that is applicable or acceptable to underground storage tanks, Comprehensive Environmental Response Compensation and Liability Act (CERCLA), Resource Conservation and Recovery Act (RCRA) and the Clean Water Act among others. Mr. Totten stated the approach is consistent with the American Society for Testing Materials (ASTM) approach used by most other states that have established risk-based programs. The department will also rely on other statutory or regulatory authorities in the development of this overarching program due to language in section 644.143, RSMo.

Mr. Totten stated the desired characteristics of the process being developed are to be protective of human health and the environment, technically defensible, consistent across all cleanup authorities, streamlined, practical, feasible, recognizes that it takes time to clean up sites and is acceptable to the Environmental Protection Agency that oversees all of the operations in this area. The desired outcomes of the group are that the process developed

provides sufficiently protective, cost-effective cleanups, processes, incentives for property redevelopment, is predictable, allows for tiered evaluation and results in appropriate decisions of no further action and terminations at more sites more quickly.

The commission's May 1 directive required a final report to be completed within four months. This report was to include a draft proposed rule if one existed or a list of issues that remain for the stakeholder committee to consider in the timeframe in which those were expected to be completed. The commission also asked that the decisions of the group be by consensus. For those policy decisions where consensus was not possible, the commission asked that they be provided with options from which to finalize the rule.

Mr. Totten reported there is no draft rule available at this time but significant progress has been made. He noted substantial progress has been made toward development of a proposed rule. The group has determined that each contaminated site needs to be evaluated so that risk to human health and the environment can be determined and an appropriate risk management plan including any required cleanup or no cleanup can be developed, agreed to and implemented. The group has agreed to use a multimedia approach to risk management. Cleanup is voluntary at many sites and the owners may decide not to pursue a cleanup due to cost. A framework for the risk-based decision making process has been developed that will be the fundamental building block of the proposed rule. The group has agreed to use a three-tiered approach similar to the ASTM standard that was recommended by many who testified at the public hearing on the proposed rule.

Mr. Totten stated tier 1 cleanup level targets are very conservative and provide protection for human health and the environment regardless of the characteristics or use of the site. If it is not feasible to clean up a site to those levels, the owner may choose to conduct a site-specific investigation of his property, establish alternate cleanup levels that are specific to his property and which are just as protective to human health and the environment. He can then develop an appropriate plan for achieving those cleanup levels. If the approach is not feasible, Tier 3 provides for an even more detailed and scientifically established cleanup level and remedial action plan.

The group is now working to finalize an array of interlinking policy choices necessary to complete the model. The model includes groundwater classification at a site which should not be confused with urban groundwater zones. Mr. Totten noted because none of these policy decisions can stand alone, and some critical decisions still need to be made, there is group consensus that no decisions can be made final until the entire model is complete.

There is general consensus on a number of significant policy choices. It has been agreed that it is not technically or economically feasible to clean up every particle of soil or drop of water to the same standard. Cleanup requirements will be based on what the current use of the site is as well as reasonable likely future uses. This is a significant change from past practices, particularly for subsurface water. The group has agreed that remediation plans must consider all contamination emanating from the site regardless of how many property boundaries may be crossed. At tank sites it is likely that only certain contaminants of concern will be dealt with. All petroleum contamination will be considered but Mr. Totten

noted that is not the same as all contaminants. Because all media and regulatory areas are involved, there are certain groups of sites that will have to be handled a little differently as the rule is drafted. It has been agreed that exposure pathways must be considered with a caveat that there is still discussion to use concepts of point of exposure and point of compliance. The group has agreed that for the analysis of the groundwater ingestion pathway, maximum contaminant levels which are drinking water standards will be used for those compounds that have a standard. For those that do not, health advisory levels established by the Missouri Department of Health and Senior Services will be used. If no health advisory level exists, a cleanup level based on the additive effects of ingestion and inhalation will be used. A tiered approach will be used to evaluate ecological risks and more stringent cleanup requirements calculated as part of the human health risk assessment or the ecological risk assessment will apply to a site.

Mr. Totten explained when consensus is reached on the remaining policy issues, the group proposes to test the resulting risk-based decision making process on an array of case studies and/or pilot projects so the rule can be fine tuned before it is adopted. This will allow for modification of the framework and policy choices based on experiences, examination of the impacts of the new processes on each of the affected laws and regulations, determination of what if any changes in program-specific regulations and/or guidance is needed, development of a guidance document for the regulation, identification of computational and reporting software for what goes on at the site, development of training for users and drafting a proposed rule or rules because some existing rules may have to be modified. Mr. Totten stated it is very likely that the Clean Water Commission's Underground Storage Tank rules will have to be modified.

Information is being used from several other states that have already adopted risk-based cleanup approaches. A specific timetable for completion of the rule has not been developed but the rule should be completed by no later than the end of this calendar year. Mr. Totten noted creating consensus among the divergent groups has been a challenge but the end product should be stronger and able to meet the direction of the commission and the needs of the public. He stated not having a complete report within the timeframe directed by the commission should not be construed as a failure of the collaborative process but rather as a result of the decision to allow more time for input and collaboration in designing and implementing the processes the commission directed. The stakeholder group has authorized a smaller committee to begin developing recommendations for finalizing the policy choices and for potential enhancements of the consensus building process that has been used to date. Depending on the outcome of this committee's efforts, further definition of the target schedule for completion will occur over the next several months. The stakeholder group plans to continue to meet every two weeks until the process is completed.

Commissioner Perry noted her understanding of the purpose of the risk-based groundwater rule is to take those areas, particularly in the urban settings, that are very highly hazardous and to encourage people to clean them up to a level that will work for the use that will occur there.

Mr. Totten replied that is correct but in any area of the state, not just in urban areas.

Commissioner Perry asked if there is a possibility of avoiding a rule that is so complicated that people will have no incentive to clean up these areas.

Kevin Perry, REGFORM, spoke to this question. He noted as a group they have adopted a general framework that is very similar to ASTM guidelines which are very well understood and widely used in other states. While the stakeholder group shares the same concern that it not be overly complicated, it has to have a degree of complexity so that you can adapt to the site itself.

Commissioner Perry stated she is concerned that this will get bogged down into something for which there will be no end.

Mr. Totten replied the evaluation process has to be fairly complex to see how much contamination can be left on the site and not pose a risk to the future use of that property.

Commissioner Perry asked if the group will reach agreement on that.

Mr. Totten stated agreement is being reached. A model that you put variables into to get the result will be used. Monitoring is done to make sure that the assumptions included in the model for that piece of property are actually occurring. Part of the risk management plan is what happens if the variables are not proving out. Mr. Totten explained this is where institutional controls, financial assurance, and having an entity in place that manages that risk over the life of the reasonable use of that property comes into play.

Commissioner Minton asked if there will be information available for a potential owner of what is required and what has been done for each of these properties.

Mr. Totten explained that there is a full array of institutional controls that can be used and the group is looking into the legal aspects of these.

Commissioner Hegi noted this would be primarily valuable in urban areas.

Mr. Totten responded there are valuable pieces of property now from a locational perspective and a transportation perspective that aren't being used in some cases.

Commissioner Hegi complemented the group on working on these issues now rather than waiting for problems to occur later.

Mr. Totten noted various parts of the work group had worked for over two years prior to the proposed rule being filed last February.

Commissioner Perry asked if anyone has an idea of when the rule will be completed.

Mr. Totten replied the group believes a rule will be written before the end of the calendar year. Decisions have yet to be made and the rule has to be tested before the pieces can be put together. The group has begun on the documentation and the guidance document and the rule will be developed from this.

Chairman Herrmann complemented the work the group has completed to date and what it intends to complete. He continued that this validates the concerns the commission had and the comments that were voiced during the public hearing.

Mike Alesandrini, Director of Environmental Affairs for the St. Louis RCGA, commended Mr. Totten and staff for all the work that has been completed to date. He noted they are pleased with the progress and are optimistic that the rule will be written by the end of the year. Mr. Alesandrini continued that the simplicity and complexity is built in appropriately.

Update on Festus/Crystal City Variance

Leo Ebel, Vice President and Director of Engineering for Horner & Shifrin, reported they have represented the Festus/Crystal City Sewage Treatment Commission for over seven years. Mr. Ebel noted a progress report was submitted to the department on August 8 regarding the variance the commission granted to the sewage treatment commission a little over a year ago.

A request for an election for the bond issue for the effluent pipeline has been approved by Jefferson County and will be held in November 2002. Mr. Ebel stated the schedule indicated a bond issue election was to be held in November 2001 to try to provide authorization for funding for this project. The cities could not organize for an election in 2001 due to the flood protection levee that is intricately related to the treatment plant. The pipeline was in jeopardy of being cancelled because of cutbacks the COE was making, ongoing discussions with the DNR about a potential change in the effluent permit limits for the proposed treatment facility, and due to concern that the plans and specifications had not yet been approved by DNR.

The sewage commission intends to proceed with obtaining property rights for a route for the proposed pipeline and preparation of design and construction documents. Mr. Ebel noted the cities will be able to get back on track with the schedule depending on the outcome of the bond election.

Mr. Ebel introduced Gary Edwards, City Administrator of Festus.

Chairman Herrmann asked what the end date is on the variance.

Mr. Ebel replied it is a five-year variance which would make the end date May, 2006 which falls within the schedule.

Update on 401 Water Quality Certifications

Becky Shannon, Acting Chief of the Water Pollution Control Program Planning Section, reported that Commissioner Minton requested at the June meeting that staff present an update on 401 certification issues. Ms. Shannon provided the following information.

The federal Clean Water Act gives authority to each state to issue 401 Water Quality Certifications for any project that needs a Federal 404 Permit. This certification is verification by the state that the project will not violate water quality standards. The first priority on these projects is to avoid impacts to water and to minimize impacts if they can't be avoided. As part of the 401 certification process, the department may either approve or deny the certification or approve the certification with certain conditions that would ensure water quality standards are met.

Examples of the kinds of projects that might be seen with 404 permits from the Corps of Engineers (COE) and 401 certifications from DNR are culverts under road crossings, riprap along stream banks, storm water outfall pipes or more elaborate projects such as levee construction. The permitting and certification process is shared between the Water Pollution Control Program staff and the COE in various district offices throughout Missouri.

For activities having a relatively minor impact to water, the COE has certain 404 Nationwide Permits (NWP) which are somewhat analogous to the department's general permits. In the past, the state's conditions for some of these projects covered under NWPs were accepted by the COE as part of their NWP. When the COE issued the 404 permit, the 401 certification conditions were attached to that and made part of the permit. As part of the most recent renewal of those NWPs, the COE notified the department in May 2002 that they did not accept the department's conditions. Therefore, the blanket authorization no longer applies and the state must certify every project individually. The department has a list of general conditions that staff had submitted to the COE that they feel are appropriate for these types of projects. Those lists of conditions are available on the department's web site so individuals applying for these types of projects know what to expect.

At the request of the department, the COE has agreed to reconsider some of the proposed conditions for NWPs in the hope that the COE will approve them and the department can then proceed with the blanket authorization on the NWPs. Staff has submitted the first of these revisions to the COE for informal review. Feedback has been received from the COE and staff is negotiating with them to fine-tune the language on those. If this effort is successful with the first nationwide, then staff will proceed with revising other NWPs. If the COE agrees to accept the conditions on NWPs, the process can become more automatic again. The fees that are currently being collected on these will no longer be applied since the statute states that fees are to be charged only on individual permits.

Legislation passed in 2000 required the department to assess a \$75 fee for 401 certifications. The first fees were billed in December 2001. As of mid-August 2002, billings were completed for 201 projects and payment was received on 165 of those. Of the ones not paid, 5 were withdrawn because the applicants did not realize that a fee had to be paid. At this point, staff are making follow-up calls to collect the fees that are significantly past due which has been largely effective. The Missouri Department of Transportation does not pay fees on certain projects due to a statutory provision. Fee payments are being tracked manually by 401 staff, but a system to track these electronically is currently being designed.

Staff have developed information on 401 water quality certifications for the department's web site which is now available. The web page includes links to the maps of the COE districts, the specific COE web sites, and the COE's application form used for 404 permits with information that that form will also suffice for DNR. The site also contains the 401 Application Checklist and the conditions that the department typically applies to projects.

Commissioner Minton noted one of the reasons he raised this issue was to expedite the water quality certification process by getting more NWP's. He noted it now appears that we have less NWP's than we originally did and asked how many the department currently has.

Ms. Shannon replied there are currently no NWP's in Missouri. She continued that the conditions provided to the COE were very much the same as the conditions that had just expired. Staff had negotiated with the COE prior to submittal to adjust wording and was very surprised and disappointed when the COE took this action.

Commissioner Minton asked how many NWP's staff was trying to get approval for.

Ms. Shannon replied approximately 11 and the COE did not accept any.

Commissioner Minton asked how this process works.

Ms. Shannon replied that this is a very complicated process due to the number of districts in Missouri. The Kansas City office has the lead in coordinating with Missouri. All of the districts that have jurisdiction in Missouri have to agree to the conditions.

Commissioner Minton asked if various districts had problems with different conditions or if there was a problem as a whole.

Ms. Shannon replied staff was not involved in the discussions nor was information shared with staff regarding who objected to what. She noted staff has recently had discussions with several COE offices to see if resolution can be reached.

Commissioner Minton asked why the Kansas City office is the lead rather than some other COE office.

Ms. Shannon replied the COE made this decision.

Mr. Hull noted the individual at the Memphis District office he spoke to regarding this issue had been in contact with the Washington office about being able to approve some of these conditions. Staff is trying to negotiate to get conditions accepted even if some of these have to be examined to see if they are still appropriate. Mr. Hull noted it is difficult to get water quality certifications completed in a timely fashion and staff is trying to get these conditions accepted again so they can concentrate more on site-specific projects.

Commissioner Minton noted it would seem practical to have NWP's for the small projects. He asked about the status of promulgating a rule for the aquatic resource mitigation guidelines used to issue 401 water quality certifications.

Ms. Shannon replied staff believes this should be done and staff has discussed including this with the next revision to the Water Quality Standards. There is concern about this being too much of a challenge if too many issues are raised during one rulemaking. Ms. Shannon noted staff is currently leaning toward putting the aquatic resource mitigation guidelines into rule after the next revision to the Water Quality Standards which would be about a year later.

Commissioner Minton asked if we are setting ourselves up for trouble with the next big controversial project that comes along.

Ms. Shannon replied there are also federal mitigation requirements with specific provisions that give support for doing mitigation but it would be clearer to have Missouri's aquatic resource mitigation guidelines in rule.

Commissioner Perry noted per statute if a policy is the basis of a decision, the decision can be overturned and attorney fees awarded.

Chairman Herrmann asked if it would be too difficult to include this rulemaking with the changes to the Water Quality Standards rather than doing it separately.

Ms. Shannon replied staff has discussed revisions that the commission has asked for and the issues have not been worked out at this time.

Chairman Herrmann stated including other rulemaking with the Water Quality Standards revisions would be asking for a lot of controversy and difficulty in getting them promulgated. Separating them would lessen the controversy and give a better chance of adopting the rulemaking.

Mr. Hull noted he will convey this concern to Mr. Totten. He continued that the issue of clarifying when and how to hold a public hearing if one is requested needs to be looked at also.

Chairman Herrmann asked for a status on the Holcim water quality certification and the upcoming hearing on the St. John's Bayou water quality certification.

Ms. Shannon reported staff has agreed to Holcim's request for a 30-day extension to the review period in order to provide additional information on wetlands delineation. A request for another 30-day extension was received from Holcim yesterday because they have not yet received the information. Ms. Shannon stated staff will probably agree to this second extension making the certification due October 17. She explained that staff is statutorily bound to issue the certification within 180 days which ends November 17 (Note: actual date is November 13).

Commissioner Minton noted on or before November 17 the department will have to issue or deny the certification.

Ms. Shannon noted Holcim could withdraw the application.

Ms. Shannon reported an application for a 401 water quality certification on St. John's Bayou was received from the COE. She noted this is unique because the COE is the applicant. The request for certification on this project was done in conjunction with a public notice of their revised supplemental environmental impact statement which had gone on public notice nationally in July. That public comment period ended August 19 and certification was requested by September 18. Staff informed the COE it was likely that a public hearing would be appropriate for this project. Based on comments that had been received by the COE, along with some opposition expressed on the public notice of the project, staff determined there is sufficient interest to hold a public hearing. Ms. Shannon explained in order to allow time for the public hearing, staff requested a 60-day extension from the COE to the review period.

Mr. Hull commented he believes they will allow an extension but not the entire 60 days that was requested.

Ms. Shannon reported the public hearing will be held September 30 at East Prairie.

Responding to Commissioner Perry's question, Ms. Shannon replied the 180 days ends in mid January.

Mr. Hull noted an official reply from the COE has not yet been received on the request for extension.

Commissioner Perry asked what happens if the extension is not approved by September 18.

Ms. Shannon replied she believes some action will have to be taken by that date.

Commissioner Minton indicated he believes they will give the department the time it needs.

Commissioner Perry asked what the denial or acceptance will be based on if nothing happens.

Ms. Shannon replied staff has the application and the environmental impact statement which have been reviewed but public comment is important and that is still lacking.

Commissioner Perry asked if there is a requirement in the statute to hold a public hearing.

Ms. Shannon stated a public hearing is required if there is sufficient public interest.

Mr. Hull noted staff has some concerns regarding what they have already reviewed.

Commissioner Minton noted this is a topic of considerable interest and there are a lot of emotions involved. He continued they are probably looking forward to a public hearing so they can demonstrate that the entire region thinks this is a good project.

Commissioner Perry asked if the commission has a role in this issue.

Ms. Shannon replied it would follow the same process that the Holcim water quality certification did.

Consolidated North County Levee District Variance Request

The Consolidated North County Levee District of St. Charles County requested an exception to the procurement process in 10 CSR 20-4.061 State Storm Water Grant and Loan Program regulations. The variance application referenced issues related to the advertising and contract award of projects undertaken through that program. Staff recommended approval of the request and the commission voted to preliminarily approve the variance request and directed staff to public notice their intention to grant final approval of the variance at the September 5, 2002 commission meeting. The comment period for this variance request will end September 9, 2002. No public comment has been received. Mr. Townley recommended final approval of the variance request contingent upon not receiving any objections between now and September 9.

Commissioner Perry asked what kind of comments would be considered.

Mr. Laux noted the statute says opposition rather than comment. If anyone has opposition, the issue will be brought back to the commission. If no opposition is expressed, then it will become a final action.

Commissioner Hegi moved to **grant final approval to the Consolidated North County Levee District variance request contingent upon no objections being received during the public notice period**; seconded by Commissioner Kelly and unanimously passed.

Clean Water State Revolving Fund Leveraged Loan Project Bypass

Mr. Townley reported staff is requesting to bypass projects who are not making significant progress toward loan closing. The Intended Use Plan allows the commission to bypass any project on a fundable priority list that is not, in the commission's opinion, making satisfactory

progress and satisfying requirements for clean water SRF assistance. Additional guidance states that carryover projects may be automatically bypassed if they do not have all documents submitted and approved on or before September 6, 2002. Mr. Townley noted this is the final date for approval of all documents for projects to participate in the fall closing.

Staff has evaluated all the projects on the Intended Use Plan and found 23 applicants are not making satisfactory progress. Commitments to these applicants in the 2003 IUP total \$66.5 million. Mr. Townley noted he requested project cost adjustments at the August meeting for Greenfield and East Prairie which were approved. These commitments were to be honored by requesting bypasses and recoveries at this meeting. Mr. Townley informed the commission an additional request has been received from Little Blue Valley Sewer District. This request goes back to the approval and adoption of the 2003 IUP where there was not sufficient financing available to honor the total request from the Little Blue Valley Sewer District. Staff indicated at that time that if there were sufficient funds made available, they would request that this project be moved from the contingency list to the fundable list. Mr. Townley requested \$23,755,000 be made available to the Little Blue Valley Sewer District. Staff has firm numbers on what this project will cost and is moving quickly toward a January closing. All the projects on the 2003 leveraged loan list have been notified of staff's intent to recommend bypassing at this meeting. No communications objecting to the bypassing have been received. Mr. Townley noted that honoring this request will leave \$42,550,330 in uncommitted funds.

Mr. Townley reported the Taney County Sewer District is present to make a request of the commission.

Commissioner Perry asked about the Little Blue Valley Sewer District increase amount. Mr. Townley replied this is approximately \$2.5 to \$3 million for an \$86 million project. He noted the district has the financial capability to undertake the project and has the full support of all the contributing communities who contract for service by the district. The original contingency list amount was \$20,185,000.

Commissioner Perry asked if staff believes that the increase to the Little Blue Valley Sewer District is merited.

Mr. Townley acknowledged it is.

Commissioner Hegi asked if there is a bond to assure that this plant will meet DNR's requirements.

Stan Christopher, Archer Engineers, said there will be a performance bond as part of the construction contract for the full amount of the construction work for meeting the performance requirements of the plant.

Larry VanGilder, Taney County Regional Sewer District, reported the sewer district has a master plan of projects to be completed as a result of an extension of a one-half cent sales tax done in April 2002. The first project is Bee Creek immediately north of Branson consisting

of over 600 homes and commercial facilities with around eight package treatment plants that can be taken off line. Mr. Van Gilder noted this contributes to about one-quarter of a million gallons per day that can be put into the wastewater treatment facility in Branson. He requested that \$5.7 million be moved from the contingency list to the fundable list to allow completion of the Bee Creek project.

Mr. Townley reported the 2003 IUP contingency list has Taney County Regional Sewer District under the phased projects partial contingency. The IUP was developed to blend projects and monies to make all projects move forward fairly expeditiously. The Taney County project was on the fundable list for \$5 million and \$23,528,500 on the contingency list. The request to move \$5.7 million from the contingency list to the fundable list based on the \$42,500,000 uncommitted would leave the uncommitted balance around \$36,850,330.

Chairman Herrmann noted the \$23.5 million was not just for the Bee Creek project.

Mr. VanGilder responded there were five projects approved by the voters to bond up to \$30 million. Bee Creek alone is \$10.7 million.

Chairman Herrmann noted the only project on the contingency list with higher priority points is Jefferson City and that project is not ready to proceed.

Mr. Townley replied they are not. He continued that Mr. VanGilder is trying to get the Bee Creek project ready for financing this time next year. Mr. Townley stated to the best of his knowledge Jefferson City is not moving with its inflow and infiltration program. The city is concentrating on the treatment plant construction that was financed last year.

Chairman Herrmann asked about the staff recommendation.

Mr. Townley explained Greenfield was approved at the last commission meeting with the understanding that staff would present monies at this meeting to honor that request along with East Prairie.

Commissioner Hegi asked how much money is received for this program each year.

Mr. Townley replied the amount is approximately \$37 million from EPA with approximately \$40 million being in next year's budget. The state provides a 20 percent match of approximately \$8 million. About \$1 million of that has historically gone toward administrative costs. The monies are then leveraged so approximately \$60 - \$65 million is available for construction activities per year. Mr. Townley suggested that the commission bypass the communities as staff recommended and allocate the recovered funds to Greenfield, East Prairie and Little Blue Valley Sewer District and allocate \$5,700,000 of the uncommitted funds to the Bee Creek project.

Commissioner Perry moved to **accept the staff recommendation for bypass and allocate recovered funds to Greenfield, East Prairie, Little Blue Valley Sewer District and fund the Taney County Regional Sewer District Bee Creek project in the amount of \$5.7 million**; seconded by Commissioner Hegi and passed with Commissioner Minton being absent during the vote.

FY 03 IUP Modification

Mr. Townley reported an evaluation of all financial assistance programs and their implications on the general revenue of the state was recently completed. One of the opportunities that arose from that review was the ability to repay the debt service on state match bonds from revenues of the fund. The 20 percent state match that is required to receive federal funds is provided through the issuance of water pollution control bonds. The proceeds of those bonds when they are sold by the state reside in an account at the Office of Administration; they do not go into the fund at that time. If the state match bonds are issued and the proceeds are immediately and directly placed inside the fund, revenues of the SRF can be used to retire those state bonds. A new sources of funds and distribution of state CAP grant funds also has to be presented. A line item has been included called transfers to debt service. Mr. Townley explained that staff is proposing to make available from the fund \$1,555,000 to be used to pay principal and interest on state match bonds. These bonds have recently been sold by the state. The proceeds of that bond sale were deposited into the new fund on August 29.

Mr. Townley stated a transfer to drinking water has been removed from the 2002 IUP. A transfer of \$5,480,791 was approved to be used to cover bond issues and financings that had been undertaken under the drinking water program under the payment hold situation with EPA. That payment hold was subsequently withdrawn by EPA and those funds have been restored. There is no longer a need for this transfer so staff is proposing to make these funds available to projects within the system.

Mr. Townley explained the staff recommendation for the commission's consideration: deletion of approximately \$5.4 million worth of fund utilization and insert a new use of \$1.5 million worth of funds for a net gain of around \$3.5 million which will be made available to projects through the uncommitted reserves or in the 2004 IUP developed through the fall.

Chairman Herrmann asked if the transfer of \$1,555,000 is necessitated by EPA's bookkeeping requirements.

Mr. Townley replied it is a requirement that staff notice this use in an IUP if the funds are to be utilized. Staff's proposal is to amend the FY 2003 IUP to incorporate the flow of funds chart on page 67 and the sources and uses of funds chart on page 69.

Commissioner Hegi moved to **approve the staff recommendation**; seconded by Commissioner Kelly and passed with Commissioner Minton being absent during the vote.

Enforcement Referrals

Quality Metal Finishing

Kevin Mohammadi, Chief of the Water Pollution Control Program Enforcement Section, reported Quality Metal Finishing is a small metal plating business which operated a facility in St. Clair, Missouri. The company has since moved their operation to another location in St. Clair that is believed to be discharging to city sewers at said new location.

On August 8, 2000, an inspection at the old location revealed a discharge of process wastewater. The discharge was eliminated prior to follow-up surveillance conducted on September 26, 2000. On April 20, 2001 a compliant investigation revealed a discharge from a septic tank at the facility which was killing vegetation. Samples revealed that the discharge contained in excess of 9,500 ug/L Chromium. The water quality standard is 100 ug/L for drinking water and irrigation, 42 ug/L for protection of aquatic life in a general warm water fishery. Samples have confirmed that the soil at the site is also contaminated. The discharge from the septic tank has stopped.

The Hazardous Waste Program reviewed a remediation plan for the site, but the consultant that prepared the plan has since reported that the company is no longer returning phone calls or answering letters. The company has since also failed to respond to letters from the Hazardous Waste Program. The Hazardous Waste Program is recommending to their management that this case be referred to the Attorney General's Office.

The company is in violation of the Missouri Clean Water Law for discharging without a permit and putting or placing a water contaminant in a location where it is reasonably certain to cause pollution of waters of the state. Since the company has ceased communicating with the department, Mr. Mohammadi recommended referral to the Attorney General's Office for appropriate legal action.

No one was present representing Quality Metal Finishing.

Responding to Commissioner Hegi's question, Mr. Mohammadi stated the City of St. Clair most likely has a pretreatment ordinance requiring pretreatment before the company can discharge into the city's collection system.

Chairman Herrmann asked if this was out of a septic tank that wasn't connected to a municipal system.

Mr. Mohammadi responded the process water is now connected to the City of St. Clair.

Chairman Herrmann asked if this is residual water from a septic tank that was considerably higher years before.

Mr. Mohammadi replied that is part of it and historical contamination also exists in the soil at the site.

Commissioner Perry asked if they have a permit at their new site.

Mr. Mohammadi replied the company discharges to the City of St. Clair who is the permitted facility.

Chairman Herrmann noted chromium in those concentrations would not be acceptable in the treatment plant.

Commissioner Perry moved to **refer Quality Metal Finishing to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Hegi and passed with Commissioner Minton being absent during the vote.

Seco Products Corporation

Mr. Mohammadi reported Seco Products Corporation is a manufacturer of fabricated stainless steel sheet metal. A Missouri state operating permit was issued to the company on January 20, 1995. The permit expired on November 2, 1999. On May 25, 1999, the department, received an application for permit reissuance. The application has not been processed pending payment of delinquent permit fees and associated penalties. An annual operating permit fee of \$1,500.00 was due on November 3, 1999, 2000 & 2001. Currently, \$4,500.00 in permit fees and a penalty of \$1,620.00 are due. The Bank of America, as secured creditor to Seco Products Corporation, has indicated the facility has closed down and operations at the Franklin County facility have ceased. Subsequent correspondence received by the department indicated Seco Products Corporation is in the process of foreclosure. Since air stripping of trichloroethylene is ongoing, an operating permit at the Franklin County facility is still required. Numerous attempts to collect the permit fees and penalties from representatives of the company or other responsible parties have not been successful.

Mr. Mohammadi recommended the matter be referred to the Office of the Attorney General for appropriate legal action.

No one was present representing Seco Products Company.

Replying to Commissioner Hegi's question, Mr. Mohammadi stated the remediation process involves air stripping the site to remove the contaminant.

Commissioner Kelly moved to **refer Seco Products Corporation to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Hegi and passed with Commissioner Minton being absent during the vote.

Other

Referrals

Mr. Hull asked for a report on any direct referrals that have been made to the Attorney General's Office.

Mr. Mohammadi informed the commission that there have not been any abatement orders issued or direct referrals made to the Office of the Attorney General. He stated when this occurs, staff plans to provide that information to the commission.

Chairman Herrmann noted he has seen articles in the newspaper regarding actions of the Attorney General's Office and he has no knowledge of any referrals to that office.

Mr. Mohammadi replied it is the opinion of the Attorney General's Office that once a matter is referred, it does not have to be referred again should a new violation occur while the Attorney General's Office is working on the original referral.

Chairman Herrmann asked how the incident is substantiated by the Attorney General's Office if the department did not issue a Notice of Violation.

Mr. Mohammadi responded a Notice of Violation is often issued, and if it is not, that department central office and regional office staff are contacted by staff of the Attorney General's Office to verify whether an incident has occurred.

Chairman Herrmann noted the commission should be made aware of any referrals made by the director's office in the future since those should only be made in an emergency situation where it is not prudent to wait for the next commission meeting.

Mr. Mohammadi noted staff plans to notify the commission of any referrals that are made by the department director or any abatement orders issued by the program or division director.

Future Meetings

Chairman Herrmann noted he believes it is beneficial to the commission as well as the staff and public to utilize Tuesday afternoons prior to the Wednesday commission meetings as a time for educational sessions or site visits. He asked that staff begin this procedure again by scheduling whatever would be of interest to the commission in the general area of the meetings.

Mr. Hull noted he agrees and staff will try to schedule whatever is appropriate prior to the meetings.

There being no further business to come before the commission, Chairman Herrmann adjourned the September 5, 2002 meeting at approximately 3:10 p.m.

Respectfully submitted,

Jim Hull
Director of Staff